

OPENING STATEMENT OF SENATOR GRASSLEY

Senator GRASSLEY. Congratulations, Judge Ginsburg, and, of course, a warm welcome to your family. I am sure that they take great pride in this day, just as they have done for all of your accomplishments so far in your life, from scholar and law professor to advocate for gender equality, and now to be a distinguished Federal appellate judge, as you have for so many years.

The CHAIRMAN. Senator, before you go on, you mentioned the family: I would like to suggest—there are two young children, and this is a tremendously tedious process. I want them to know they are welcome. Instead of having to go out there to use the facilities and the television or anything they want back here, you have free roam, the kids, literally. So you can go back there, and this is the one time to exact from your daddy a promise of ice cream or something for being good. This is the time to do it. [Laughter.]

I apologize for the interruption, Senator. Seriously, you are welcome to use this end, as well.

Thank you.

Senator GRASSLEY. Also, they might help us by distracting us from time to time.

Today, after so many different distinguished careers you have, is the beginning of an even more notable achievement. If confirmed, you will become only the 107th person on the Supreme Court as a Justice. Indeed, you will join a very elite and a very important group, all charged with interpreting the Constitution.

You, Judge Ginsburg, seem to understand the place that the Supreme Court occupies within our democracy. Through many of your writings, I have detected traces of Alexander Hamilton. For example, you appreciate that the Framers gave the Court great authority to rule on the Constitution, but armed the Court with no swords to carry out its pronouncements.

Alexander Hamilton envisioned that it would be the accountable branch of government, the legislature, that would make the difficult choices within and for our society. In many of your opinions, you have expressly deferred to the will of Congress, as you apply law to the facts of a case.

This confirmation hearing gives us an opportunity to explore your approach to judging and to determine whether you will exercise self-restraint. That, after all, is the touchstone. A Justice must be willing to accept the Constitution as her rule of decision. And a Justice must be able to resist temptation to revise or amend the Constitution according to her definition of what is good public policy.

You and I will disagree on specific issues and will disagree on particular cases. I have no doubt about that. But the issue is not whether you and I can sign onto some political platform together. Justice need not be pro-one thing and anti-another thing. That is why judges were given lifetime tenure, so that they would be insulated from the political pressures of the day. The confirmation process need not be a campaign trail of promises by a nominee. These hearings are about judicial philosophy, not about political results.

Through much of the second half of this century, the Supreme Court has evolved into a political institution and away from being a legal institution. That trend has diminished somewhat in recent

years, with the nomination and confirmation of individuals anchored in the Constitution and individuals who have a deferential approach to the political accountable branches of government. Some political activists, including some of my distinguished colleagues on this committee, are hoping your presence on the Court will bring back an era of political judging. But that view shows a misunderstanding of the role of the Supreme Court.

Your fidelity to the Constitution, your appreciation of its framework of limited powers, and your understanding of the role of Congress and the States in making law—these are the important qualities. In addition, and no less important, a Justice must possess an open mind, or what Justice Frankfurter called “a capacity of disinterested judgment.”

I look forward to exploring these ideas in greater detail with you during these hearings. Once again, I say congratulations to you and all your friends and your family.

[The prepared statement of Senator Grassley follows:]

PREPARED STATEMENT OF SENATOR GRASSLEY

Congratulations, Judge Ginsburg, and welcome to your family. I am sure they take great pride in this day, just as they have done with all of your accomplishments—from scholar and law professor—to advocate for gender equality—to distinguished Federal appellate judge.

But today marks the beginning of an even more notable achievement. If confirmed, you will become only the 107th person to become a Supreme Court Justice. Indeed, you will join a very elite and important group, charged with interpreting the Constitution.

You, Judge Ginsburg, seem to understand the place the Supreme Court applies within our democracy. Through many of your writings, I have detected traces of Alexander Hamilton. For example, you appreciate that the Framers gave the Court great authority to rule on the Constitution, but armed the Court with no swords to carry out its pronouncements. Hamilton envisioned that it would be the accountable branch of government—the Legislature—that would make the difficult policy choices. In many of your opinions, you have expressly deferred to the will of Congress as you apply law to the facts of a case.

This confirmation hearing gives us an opportunity to explore your approach to judging and determine whether you will exercise self-restraint. That, after all, is the touchstone. A Justice must be willing to accept the Constitution as her rule of decision. And, a Justice must be able to resist the temptation to revise or amend the Constitution according to her views of what is good public policy.

We will disagree on specific issues and particular cases; I have no doubts about that. But the issue is not whether you and I can sign on to some political platform together. A Justice need not be “pro-one thing” and “anti-another thing.” Judges were given lifetime tenure to insulate them from the political pressures on the day. The confirmation process need not be a campaign trail of promises by a nominee. These hearings are about judicial philosophy, not political results.

Through much of the second half of this century, the Supreme Court had grown into a political institution and away from being a legal institution. That trend has diminished somewhat in recent years, with the nomination and confirmation of individuals anchored in the Constitution and deferential to the politically accountable branches of government. Some political activists are hoping your presence on the Court will bring back an era of political judging. But that view misunderstands the role of the Supreme Court.

Your fidelity to the Constitution, your appreciation for its framework of limited powers, and your understanding of the role of Congress and the States in making law—these are the important qualities. In addition, and no less important, a Justice must possess an open mind, or what Justice Frankfurter called, “a capacity for disinterested judgment.”

I look forward to exploring these ideas in greater detail with you during these hearings. Once again, congratulations.

The CHAIRMAN. Thank you very much, Senator.
Senator Leahy.